

The opinion in support of the decision being entered today was *not* written
for publication and is *not* binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENNETH S. KNAPTON III

Appeal No. 2000-2227
Application No. 09/089,834

ON BRIEF

MAILED

JUL 18 2002

**PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES**

Before KRASS, JERRY SMITH, and BARRY, *Administrative Patent Judges*.
BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

A patent examiner rejected claims 1-8 and 12-17.¹ The appellant appeals
therefrom under 35 U.S.C. § 134(a). We affirm.

¹Although the body of the answer also includes a rejection of claims 9 and 10, (Examiner's Answer at 9-10), the former claim has been allowed, (Paper No. 6 at 2, Paper No. 8), and the latter claim has been canceled. (Paper No. 5 at 2). Therefore, we consider the inclusion to be a mistake and will not entertain it in deciding this appeal.

BACKGROUND

The appellant's invention concerns object oriented software. Figure 3 of the appellant's specification shows a pair of objects 32 and 34 having different Globally Unique Identifiers ("GUIDs") and different interfaces. More specifically, the GUID and interface for the first object 32 are labeled as "GUIDA" and "I1," respectively. Similarly, the GUID and interface for the second object 34 are labeled respectively as "GUIDB" and "I2." (Spec. at 6.)

A compiled application 36 includes a layer class 38 and a client 46 in communication therewith. (*Id.*) A system database stores GUIDA 50 and GUIDB 52. The layer class obtains the GUID for a selected object through the client. More specifically, the client obtains the GUID for the selected objects from the system database, which allows the layer class to access the corresponding object without recompilation. (*Id.*) The appellant asserts that, heretofore, the first and second objects would need to have the same GUIDs and interfaces to be compatible. (*Id.* at 6-7.)

A further understanding of the invention can be achieved by reading the following claim:

6. A method for object oriented programming comprising:
registering a first object with a first globally unique identifier;

registering a second object with a second globally unique identifier;
and

selectively accessing one of said first and second objects in place
of one another without recompiling.

Claims 1-5 and 12-17 stand rejected under 35 U.S.C. § 112, ¶ 2, as indefinite.
Claims 1-6, 8, 12-13, and 15-17 stand rejected under 35 U.S.C. § 102(e) as anticipated
by U.S. Patent No. 5,881,230 ("Christensen"). Claim 7 stands rejected under 35 U.S.C.
§ 103(a) as obvious over Christensen. Claim 14 stands rejected under § 103(a) as
obvious over Christensen in view of U.S. Patent No. 5,835,914 ("Brim").

OPINION

After considering the record, we are persuaded that the examiner did not err in
rejecting claims 1-5 and 12-17 as indefinite, claims 6 and 8 as anticipated, and claim 7
as obvious. He did err, however, in rejecting claims 1-5, 12-13, and 15-17 as
anticipated and claim 14 as obvious. Accordingly, we affirm. Our opinion addresses
the rejections in the following order:

- rejections of claims 1-5 and 12-17
- rejections of claims 6-8.

I. Rejections of Claims 1-5 and 12-17

The examiner asserts, "[w]ith respect to claim 1, in line 4, 'inserting a second object' is unclear as to where the second object is being inserted. Claim 12 is rejected for the same reason as claim 1." (Examiner's Answer at 3.) Although the appellant argues the anticipation rejection of claims 1-5, 12-13, and 15-17 and the obviousness rejection of claim 14, (Appeal Br. at 6-8), he does not contest the indefiniteness rejection of claims 1-5 and 12-17.

The appellant's "[s]ilence implies assent." *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 572, 225 USPQ 1073, 1085 (1985). Furthermore, we are not persuaded that the examiner erred in rejecting the claims as indefinite. Therefore, we affirm *pro forma* the indefiniteness rejection of claims 1-5 and 12-17.

Turning to the prior art rejections of claims 1-5 and 12-17, we recall that a rejection based on art should not be grounded on "speculations and assumptions." *In re Steele*, 305 F.2d 859, 862, 134 USPQ 292, 295 (CCPA 1962). "All words in a claim must be considered in judging the patentability of that claim against the prior art. If no reasonably definite meaning can be ascribed to certain terms in the claim, . . . the claim becomes indefinite." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

Here, for the reasons we explained in addressing the indefiniteness rejection, our analysis of claims 1-5 and 12-17 leave us in a quandary about what the claims specify. Speculations and assumptions would be required to decide the scope of the claims. Therefore, we reverse *pro forma* the rejection of claims 1-5, 12-13, and 15-17 as anticipated and the rejection of claim 14 as obvious.²

II. Rejections of Claims 6-8

At the outset, we recall that claims that are not argued separately stand or fall together. *In re Kaslow*, 707 F.2d 1366, 1376, 217 USPQ 1089, 1096 (Fed. Cir. 1983) (citing *In re Burckel*, 592 F.2d 1175, 201 USPQ 67 (CCPA 1979)). Here, the appellant stipulates, "claims 6-8 may be grouped." (Appeal Br. at 6.) Therefore, claims 7 and 8 stand or fall with representative claim 6.

With this representation in mind, rather than reiterate the positions of the examiner or appellant *in toto*, we address the two points of contention therebetween. First, the examiner asserts, "Christensen teaches . . . each objects are uniquely represented and identifiable is shown in column 11 line 32-42. . . ." (Examiner's

²The reversal is based on procedure rather than on the merits of the prior art rejections. It is not to be construed as meaning that we consider the claims to be patentable as presently drawn.

Answer at 11.) The appellant argues, "Christensen does not teach using two different identifiers. . . ." (Appeal Br. at 8.) Admitting that in the reference, "[l]ots of objects may be created with lots of GUIDs," (Reply Br. at 1), moreover, the appellant further argues, "[t]hat does not mean a different GUID is utilized on the client and the remote for the *same* object." (*Id.* at 1-2.)

"Analysis begins with a key legal question -- *what* is the invention *claimed*?" *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1567, 1 USPQ2d 1593, 1597 (Fed. Cir. 1987). In answering the question, "the Board must give claims their broadest reasonable construction. . . ." *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1668 (Fed. Cir. 2000). "Moreover, limitations are not to be read into the claims from the specification." *In re Van Geuns*, 988 F.2d 1181, 1184, 26 USPQ2d 1057, 1059 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)).

Here, representative claim 6 specifies in pertinent part the following limitations: "registering a first object with a first globally unique identifier; [and] registering a second object with a second globally unique identifier. . . ." Giving the claim its broadest reasonable construction, the limitations do not require using a different GUID for the

same object. To the contrary, the claim merely requires using a different GUID for each of (at least) two objects.

"[H]aving ascertained exactly what subject matter is being claimed, the next inquiry must be into whether such subject matter is novel." *In re Wilder*, 429 F.2d 447, 450, 166 USPQ 545, 548 (CCPA 1970). "[A]nticipation is a question of fact." *Hyatt*, 211 F.3d at 1371, 54 USPQ2d at 1667 (citing *Bischoff v. Wethered*, 76 U.S. (9 Wall.) 812, 814-15 (1869); *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (citing *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 715, 223 USPQ 1264, 1270 (Fed. Cir. 1984); *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983); *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 771, 218 USPQ 781, 789 (Fed. Cir. 1983)).

Here, we find that Christensen uses a different GUID for each of its objects. Specifically, "[t]he Remote Automation application ensures that objects are uniquely represented and identifiable when passed from one computer to another by assigning every object a unique GUID when it is created." Col. 11, ll. 32-35.

Second, the examiner asserts, "selectively accessing one of said first and second objects without recompiling is shown in column 7 line 21-26. . . ." (Examiner's Answer at 12.) The appellant argues, "Christensen does not teach . . . selectively accessing one of the first or second objects without recompiling." (Appeal Br. at 8.)

Representative claim 6 further specifies in pertinent part the following limitations: "selectively accessing one of said first and second objects in place of one another without recompiling." Giving the claim its broadest reasonable construction, the limitations merely require selectively accessing one of at least two objects without recompiling.

We find that Christensen selectively accesses one of at least two objects. Specifically, "the Windows®95 client/server operating system provides shareable resources, such as files, memory, processes and threads, which are implemented as 'objects' and are accessed by using 'object services.'" Col. 5, ll. 5-8. We also find that the reference does not require recompiling. Specifically, "[e]xisting OLE applications **do not have to be** changed or **recompiled** using Remote Automation." Col. 7, ll. 24-26. Therefore, we affirm the rejection of claim 6 and of claims 7 and 8, which fall therewith.

CONCLUSION

In summary, the rejection of claims 1-5 and 12-17 under 35 U.S.C. § 112, ¶ 2; the rejection of claims 6 and 8 under § 102(e); and the rejection of claim 7 under § 103(a) are affirmed. In contrast, the rejection of claims 1-5, 12-13, and 15-17 under § 102(e) and the rejection of claim 14 under § 103(a) are reversed.

Our affirmances are based only on the arguments made in the brief. Arguments not made therein are neither before us nor at issue but are considered waived. No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a).

[Handwritten signature]

Jerry Smith
JERRY SMITH


LANCE LEONARD BARRY
Administrative Patent Judge

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